

UNCLASSIFIEDDEPARTMENT OF STATE
THE LEGAL ADVISER

January 30, 1946.

MN:

Miss Alice Ball of MN brought to the Office of the Legal Adviser this morning the original copy of a directive signed by the President, addressed "To The Secretary of State, The Secretary of War, and The Secretary of the Navy", establishing a National Intelligence Authority.

Miss Ball wanted an opinion from the Office of the Legal Adviser as to whether or not the directive should be published in the Federal Register and the original placed on file with the National Archives. She stated that Mr. McCormack of SA had expressed no objection to the directive's being published in the Federal Register.

The directive is not confidential. The general portent of it appeared in the newspapers on January 22-23, and the letter of the President in its entirety is in the process of being published in the State Department Bulletin.

The contents of the directive are of such a nature, in establishing a central intelligence group and in designating its duties and powers, that publication in the Federal Register would seem compulsory in order that other Government agencies may have official notice of the authority, aims, and purposes of the organization.

A telephone conversation with Mr. Schwarzwaldler disclosed that Captain Clifford (U.S.N.) on Admiral Leahy's staff at the White House has been familiar with the directive since its inception. Captain Clifford informed the inquirer that this subject had been discussed with Solicitor General McGrath and others when the President's letter was prepared and that all parties involved had agreed that the directive should be published in the Federal Register.

Therefore, since official notice of the formation of the organization should be given, and since there appears to be no reason for not publishing the directive, but on the contrary the failure to publish it appears to have been an oversight, steps should be taken for the publication of the directive in the Federal Register and for filing with the Archives.

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Authority

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The statute providing for the publication of documents in the Federal Register (44 U.S.C. 301-305) specifies that

"(a) There shall be published in the Federal Register (1) all Presidential proclamations and Executive orders, except such as have no general applicability and legal effect or are effective only against Federal agencies or persons in their capacity as officers, agents, or employees thereof; (2) such documents or classes of documents as the President shall determine from time to time have general applicability and legal effect; ...

"(b) In addition to the foregoing there shall also be published in the Federal Register such other documents or classes of documents as may be authorized to be published pursuant hereto by regulations prescribed hereunder with the approval of the President, ..."

Although I have been unable to find any regulations prescribed with the approval of the President requiring the publication of directives, Mr. Eberhart, of the Federal Register staff, informs me that it has been their practice on a number of occasions to publish directives and even letters which have "general applicability and legal effect".

SA-MC - J.F. Fine 1/2/46

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